



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10-90; FCC 18-53]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Denial of petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses the petition for reconsideration filed by Alaska Communications Systems (ACS) of the October 31, 2016 Commission's ACS Connect America Fund (CAF) Phase II Order. The Commission denies the petition.

DATES: The denial of the petition for reconsideration is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in WC Docket Nos. 10-90; FCC 18-53, adopted on April 25, 2018 and released on April 26, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street S.W., Washington, D.C. 20554 or at the following Internet address: <https://www.fcc.gov/document/fcc-addresses-alaska-communications-systems-high-cost-petition>

I. INTRODUCTION

1. In this Order, the Commission addresses the petition for reconsideration filed by ACS of the October 31, 2016 Commission ACS CAF Phase II Order. The ACS CAF II Order, 81 FR 83706, November 22, 2016, established the CAF Phase II voice and broadband service obligations for ACS. In its petition, ACS seeks reconsideration of the Commission's definition of "high-cost," which the Commission adopted to provide ACS flexibility to meet its service commitment by deploying to certain locations within census blocks that otherwise have been identified as "low cost." The Commission

required ACS to certify, in order to take advantage of that flexibility, that its minimum capital expenditure (capex) for each location in the “low cost” census block was at least \$5,000, whereas ACS asks that the threshold be lowered to \$2,577.79.

2. The Commission hereby denies the ACS petition. In denying the petition, the Commission determines that it struck an appropriate balance in providing ACS some flexibility in meeting its service commitment, while ensuring that high-cost support is targeted to areas that need it most.

II. DISCUSSION

3. The Commission denies ACS’ petition to reconsider the conditions the Commission placed on the flexibility it granted ACS. In structuring support, the Commission adopted a tailored approach that reflects the unique challenges of serving Alaska, while preserving and adhering to its fundamental universal service principles and policies – including targeting support to locations that are truly in need of support. In its petition, ACS states that it “objects to none of [the] conditions [of substituting high-cost locations in low-cost census blocks], but seeks reconsideration only of the meaning of ‘high-cost’ in [that] context.”

4. As a matter of policy, the Commission decided that the minimum capex for permitting ACS to substitute a location in a low-cost census block for a location in a high-cost census block would be \$5,000 as a way of prioritizing support going to higher-cost unserved locations even when allowing ACS to forego deploying to locations in model-identified eligible census blocks. Setting the threshold at or near the lower bound of what ACS estimates is the capex required to serve a location in a high-cost census block would counter the Commission’s objective in the ACS CAF II Order, because it would allow funding to be re-directed to relatively lower cost locations while leaving higher cost locations unserved. These relatively lower cost locations that would be eligible under the revised threshold are precisely the locations that are more likely to be served even in the absence of universal service support. Particularly given that ACS does not propose that their support levels be adjusted to account for the fact that they would be serving relatively lower cost locations, granting the ACS request would work against the Commission’s efforts to efficiently serve the higher cost locations which are least likely to be served

apart from universal service support. Therefore, the Commission chose to set the minimum threshold at the average capex for locations in high-cost areas otherwise available to ACS, instead of at the lower bound otherwise used for determining funded locations. This decision thus made sure such flexibility was available to ACS only in instances where the location is among the more costly to serve.

5. As the steward of the limited Universal Service Fund (USF), the Commission has discretion to tailor high-cost support to areas that are the most costly to serve. It is reasonable and entirely within the Commission's authority to limit the flexibility by prioritizing deployment to locations with a greater need for funding, based on the amount of capex ACS actually spends. ACS seems to concede this is a lawful and proper exercise of the Commission's discretion as it seeks even greater flexibility. The \$5,000 minimum threshold ensures that ACS is meeting its obligation to serve the locations in model-determined high-cost areas, while allowing ACS some flexibility to exchange some unserved locations in adjacent census blocks for which the cost model did not calculate support, but which nevertheless ultimately are among the costliest for ACS to serve. As the flexibility to swap locations is an exception based on the unique circumstance of ACS in Alaska, the Commission finds that establishing this limit is reasonable and consistent with its overarching universal service principal and policies. The Commission is not persuaded by ACS's arguments that there is no reasonable basis for the \$5,000 minimum capex certification requirement or that this obligation is contrary to the public interest.

6. ACS is also misguided in arguing that the \$5,000 minimum threshold will leave certain locations unserved and deny support to locations that are otherwise entitled to it. ACS is not required to substitute any locations, and regardless of whether it does, must still deploy to 31,571 locations by the end of the term of support. The Commission made a limited exception in the ACS CAF II Order that allows ACS to use high-cost support in model-determined low-cost census blocks where the population is lacking service and where it is very costly. Although the level of the threshold will affect which specific locations are served and counted toward the requirement, the public interest is served because the number of locations ACS is required to serve remains the same.

7. ACS has long argued that the CAM does not appropriately account for the significantly higher costs required to build and operate in Alaska. It is due, in part, to this advocacy that the

Commission adopted an ACS-specific order. However, accepting ACS's premise that the CAM underestimates locations' costs would counsel against establishing a threshold at the lower end of what ACS's own analysis of the CAM would define as a high-cost location. To use a threshold at such a level would imply that the Commission should allow ACS the flexibility to substitute locations that may not even require support while abandoning locations that are clearly in need of high-cost support. This is because accepting the premise that the CAM underestimates costs would suggest the lower bound threshold ACS proposes is likely too low. By setting the threshold at \$5,000 per location, the Commission was able to allow for some flexibility while also reducing subsidization of lower cost locations. Based on ACS' representations regarding capex costs in Alaska and the costs to build to these unserved locations, meeting this threshold should not be problematic. Therefore, the Commission finds its decision was reasoned and serves the public interest. ACS provided nothing in its Petition that persuades us to alter this requirement.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act

8. This document does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

9. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(j), 214, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(j), 214, 254, and 405 and § 1.429 of the Commission's rules, 47 CFR 1.429, that this Order IS ADOPTED.

11. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(j),

214, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(j), 214, 254, and 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration of the Commission's Order, filed by Alaska Communications, IS DENIED as discussed herein.

12. IT IS FURTHER ORDERED that, pursuant to the authority contained in § 1.103 of the Commission's rules, 47 CFR 1.103, this Order SHALL BE EFFECTIVE **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,
Secretary,
Office of the Secretary.

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